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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No. 855 of 2006 .

PETITIONER	:	NADIRA BEGUM, W/O SHRI ZUBAIR AHMED CHOUDHARY, R/O MIG II/26 HUDCO, BHILAI, DISTT- DURG (C.G.)
		Versus.
RESPONDENTS	1.	COMMISSIONER, INCOME TAX, NEW CENTRAL REVENUE BUILDING, CIVIL LINES RAIPUR (C.G.)
	2.	ASSISTANT COMMISSIONER OF INCOME TAX – 2, 18/32 BUNGLOWS, BHILAI, DISTT – DURG. (C.G.)
	3.	BRANCH MANAGER, SYNDICATE BANK, MOURYA CINEMA COMPLEX, G.E. ROAD, BHILAI, DISTT. DURG (C.G.)

Present: Shri Ali Asgar, learned counsel for the petitioner.
Shri Amit Choudhary, learned counsel for respondents 1 & 2.
Shri P.R. Patankar, learned counsel for respondent No.3.

ORAL ORDER
(Passed on 14th September, 2006)

The dispute brought before this Court does not merit public law review under Article 226 of the Constitution of India. The facts are simple. It appears that against the husband of the petitioner, proceedings were initiated by the Assessing Authority to recover the income tax dues. The petitioner had invested a sum of Rs. 40,000/- in Vikas Cash Certificate (E-789625/3337) dated 05.09.1992. When the proceedings initiated against the husband were pending, the petitioner made a representation to the Commissioner of Income Tax-2, Bhilai on 18.12.2003. It appears that in the course of search of the dwelling premises of the petitioner and her husband, the above certificate was seized and it was in the custody of the

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Assessing Authority. In the above representation the petitioner sought return of the certificate. At the same time, the petitioner in an unmistakable term told the Commissioner, Income Tax-2, Bhilai that she was seeking encashment of the certificate in order to help her husband in paying the Income Tax dues to the Income Tax Department by encashing the certificate. It appears that the department *bona fide* believing that the petitioner wanted to encash the Vikas Cash Certificate in order to pay the Income tax dues to the Income Taxdepartment by her husband, forwarded the certificate to the bank concerned for encashing the same and to adjust towards the tax liability of her husband. When the matter stood thus, this writ petition is filed complaining that the Assessing Authority is not justified in encashing the Vikas Cash Certificate and adjusting the money towards the tax liability of her husband. The petitioner has sought for a direction to the respondents to release the amount under the Vikas Cash Certificate to her.

(2) The writ petition is opposed by the respondents by filing returns. In the return filed on behalf of the department, it is stated that since the petitioner herself in her representation to the Commissioner, Income Tax-2, Bhilai, sought release of the money under the certificate in order to pay the income tax dues on behalf of her husband, the department was justified in realizing the amount under Vikas Cash Certificate and adjusting the same towards the tax liability of her husband.

(3) I heard learned counsel for the parties. It was contended by the learned counsel for the petitioner that on the basis of the letter of the petitioner to the Commissioner of Income Tax-2, Bhilai, the Assessing Authority ought not have encahsed the certificate and adjusted the realized money towards tax liability of her husband, and she did not

authorize the Income Tax Department to do in the way the department did. I do not find any merit in the contention. In the letter addressed to the Commissioner of Income Tax-2, Bhilai, the petitioner in an unmistakable term stated that she was seeking encashment of the Vikas Cash Certificate in order to help her husband in paying the Income tax dues. Of course, there was no legal obligation on the part of the petitioner to help her husband by paying her own money in clearing the income tax dues of her husband. If the petitioner understandably and voluntarily wanted to help her husband and requested the Income Tax department to permit her to encash the Vikas Cash Certificate in order to clear the income tax dues of her husband, it could not be said that the department acted illegally or arbitrarily in taking the steps to forward the Vikas Cash Certificate to the bank concerned and realizing the amount under the said certificate and adjusting the same towards tax liability of the petitioner's husband. It is not the case and it can not be the case of the petitioner that even after adjusting the realized money towards tax liability any amount was left to be paid to the petitioner. In the course of hearing, learned standing counsel for the Income Tax department Shri Amit Choudhary would submit that even after the adjustment of the money, the petitioner's husband has yet to pay a sum of Rs.8,35,000/- towards the remaining tax liability. Be that as it may, it is not for this Court to decide whether any money left after adjustment to which the petitioner is entitled to claim. These are the issues that can properly be thrashed out in a suit before the jurisdictional civil Court or by making appropriate representation to Income Tax Authorities. The writ petition is dismissed subject to the above observations. No costs.

Sd/-
Chief Justice

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